

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 04-356
in the 1915-1920 MHz, 1995-2000 MHz,)	
2020-2025 MHz and 2175-2180 MHz Bands)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 02-353
in the 1.7 GHz and 2.1 GHz Bands)	

**COMMENTS OF PCIA,
THE WIRELESS INFRASTRUCTURE ASSOCIATION**

The PCIA, The Wireless Infrastructure Association (PCIA) herewith files its comments on the *Notice of Proposed Rule Making* (NPRM) in the above-captioned proceeding.¹ PCIA urges the Federal Communications Commission (Commission) to establish rules which will promote the development of Advanced Wireless Services (AWS), including the creation of a cost-sharing clearinghouse in the 2110-2150 MHz and 2175-2180 MHz bands. The adoption of a cost-sharing clearinghouse will: (1) facilitate the relocation of incumbent operations in the bands identified for AWS; (2) ensure the effective and equitable allocation of cost-sharing expenditures among AWS licensees; and (3) minimize the burden on the Commission of resolving cost-sharing disputes in the AWS bands.

¹ Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Notice of Proposed Rulemaking*, 69 Fed. Reg. 63489 (Nov. 2, 2004).

I. Introduction

PCIA is the principal trade association representing the wireless telecommunications and broadcast infrastructure industry. Founded in 1949 in the spirit of creating new industries, PCIA has a distinguished history of helping build many key companies that comprise the wireless telecommunications sector. From its beginnings in land mobile radio to paging and messaging, and from personal communications services (PCS) to tower and antenna siting, PCIA has been instrumental in facilitating the emergence and growth of core wireless services. PCIA's members develop, own, manage, and operate towers, commercial rooftops, and other infrastructure for the provision of all types of wireless, broadcasting, and telecommunications services. In addition, PCIA operates the PCIA Microwave Clearinghouse (MWCH), a nonprofit subsidiary which serves as the Commission-designated clearinghouse for cost-sharing administration in the 1.9 GHz broadband PCS bands. As explained more fully below and in the separate comments filed by the PCIA MWCH, the MWCH has been exceptionally effective in identifying cost-sharing obligations in the 1.9 GHz band and in resolving cost-sharing disputes.

PCIA has been actively involved in this proceeding and related AWS proceedings to urge the Commission to adopt a cost-sharing clearinghouse. On February 7, 2003, PCIA filed comments on the *Notice of Proposed Rulemaking*, FCC 02-305, in WT Docket No. 02-353² to urge the Commission to establish a cost-sharing clearinghouse that would facilitate the rapid development of AWS. On February 23, 2003, PCIA submitted a

² 67 Fed. Reg. 78209 (Dec. 23, 2002).

Petition for Partial Reconsideration, seeking review of certain rules adopted by the Commission in its *Second Report and Order*, FCC 02-304, in WT Docket No. 02-353³ and reiterating its call for the establishment of a cost-sharing clearinghouse in the 2110-2150 MHz band. On April 14, 2003, PCIA filed comments on the *Third Notice of Proposed Rulemaking*, FCC 03-16, in WT Docket No. 00-258⁴ to again propose a cost-sharing clearinghouse for the 2110-2150 MHz band. The goal of these filings, as with the present filing, is to facilitate the rapid deployment of AWS through the adoption of proven cost-sharing mechanisms that are indispensable to the successful resolution of complex relocation obligations.

II. A Cost-Sharing Clearinghouse Should be Adopted for the AWS Bands

In the *NPRM*, the Commission seeks comments on a number of issues related to the creation of a cost-sharing clearinghouse in the AWS bands, including PCIA's outstanding proposal to establish a clearinghouse in the 2110-2150 MHz band.⁵ The Commission notes that, while PCIA's original cost-sharing proposal was directed at only the 2110-2150 MHz band, licenses in the 2175-2180 MHz band would face similar cost-sharing issues. The Commission is therefore seeking comments on whether the same cost-sharing rules should be applied to both the 2110-2150 MHz and 2175-2180 MHz bands.⁶

³ 68 Fed. Reg. 3455 (Jan. 24, 2003).

⁴ 68 Fed. Reg. 12015 (Mar. 13, 2003).

⁵ *NPRM* at ¶¶47-49.

⁶ *NPRM* at ¶49.

PCIA supports the application of cost-sharing rules, including the establishment of a cost-sharing clearinghouse, in both the 2110-2150 MHz and 2175-2180 MHz bands.⁷ These obligations should be shared by all licensees that benefit from the clearing of incumbent operations. PCIA believes that, if the Commission licenses AWS on a non-nationwide basis, there will be a strong need for a neutral administrator in these bands to ensure that the relocation costs are equitably allocated among AWS licensees. Cost-sharing will ensure that no AWS licensee is unfairly disadvantaged by its desire and ability to quickly deploy AWS. Instead, those licensees deploying service quickly will be able to obtain compensation from other licensees that benefit from their relocation efforts.

Without a clearinghouse to administer the complex cost-sharing formula necessary to allocate relocation costs, the deployment of AWS may be frustrated by cost-sharing disputes. The administration of a cost-sharing formula among potential competitors is not an easy task. An impartial administrator, using an open and transparent process, is necessary to quickly resolve complaints before the deployment of AWS is threatened. As demonstrated by the success of the PCIA MWCH, a cost-sharing clearinghouse also would minimize the burden on the Commission of resolving these disputes by creating expedited alternative resolution procedures.

Given the similarity between the incumbent and new operations in the AWS bands and those in the 1.9 GHz bands, PCIA urges the Commission to use the existing Part 24

⁷ If AWS is licensed on a non-nationwide basis, PCIA believes that the establishment of a clearinghouse in both bands would be essential to the success of AWS deployment. However, the failure to adopt PCIA's proposal for one of these bands should not affect the decision to adopt a clearinghouse for the other band. Therefore, PCIA would support the establishment of a clearinghouse in either the 2175-2180 MHz or 2110-2150 MHz band, or both.

cost-sharing rules for the AWS bands.⁸ By imposing clear and unambiguous cost-sharing obligations based on objective geographic and frequency band criteria, the existing Part 24 rules have provided certainty to PCS licensees, expedited the relocation of incumbents and equitably allocated relocation costs among new licensees. The “proximity threshold test,” for example, eliminates the need for extensive engineering negotiations that would occur if, for example, the TSB-10 interference criteria had been used as the trigger criteria.⁹ The registration and documentation requirements are practical and impose minimal burdens on new licensees.¹⁰ The existing rules also encourage the speedy resolution of disputes by requiring parties to bring disputes first to the clearinghouse for resolution, and then, if the clearinghouse cannot resolve the dispute, to use expedited alternative dispute resolution procedures.¹¹

While the existing rules provide a sound basis for the establishment of an AWS cost-sharing clearinghouse, PCIA urges the Commission to consider minor modifications to improve the cost-sharing process. Based on its experience operating the PCIA MWCH, PCIA urges the Commission to:

- (1) Establish a rule requiring the submission of licensing data by all entities. Under the existing rules, some PCS licensees have chosen to conduct their own interference analyses. These analyses often erroneously indicated that no prior coordination notice (PCN) filings are required. In these cases, the PCIA MWCH has had difficulty obtaining the necessary data to independently assess the need for PCN filings.

⁸ 47 CFR §24.239 et seq.

⁹ 47 CFR §24.247.

¹⁰ 47 CFR §24.245.

¹¹ 47 CFR §24.251.

- (2) Clarify that AWS licensees are required to act in good faith and that reasonable interest charges should be applied to cost sharing obligations. While PCIA has found that the overwhelming majority of licensees have acted in good faith in cost-sharing matters, there are signs that as the sunset date approaches some licensees may perceive benefits in delaying paying their obligations by filing frivolous protests. The Commission could prevent licensees from manipulating the system by clearly and explicitly affirming that licensees are required to act in good faith and that reasonable interest charges should be applied to cost sharing obligations.
- (3) Assign some weight to the decisions of the clearinghouse in appeals to the Commission. Under the existing rules, the decision of the clearinghouse has been afforded no additional weight in the appeals, limiting its ability to broker compromises and settlements.
- (4) Provide for an interface mechanism between the clearinghouse and the Commission for resolving rule interpretations and disputes on an expedited basis. Given the complexity of the transactions involved, the clearinghouse may need to receive an expedited Commission decision pertaining to the application of the cost-sharing rules or the resolution of a dispute. Establishing an expedited process to resolve outstanding issues would facilitate AWS deployment by minimizing uncertainties regarding licensees' cost-sharing obligations.

With these few modifications, PCIA believes that the existing Part 24 rules should be applied to the AWS bands.

III. PCIA Should be Assigned Responsibility to Serve as the Clearinghouse for the AWS Bands

PCIA is uniquely suited to successfully administer the cost-sharing clearinghouse for the AWS bands. As explained above, PCIA believes that the establishment of a cost-sharing clearinghouse for these bands will facilitate the relocation of incumbent operations and the deployment of AWS services. However, in order to carry out these goals, the clearinghouse administrator must have the experience and resources necessary to apply the appropriate cost-sharing mechanism to complex commercial transactions. PCIA strongly believes that it is the only entity with the experience and resources necessary to perform this role effectively.

PCIA has successfully operated a cost-sharing clearinghouse for more than 8 years. In establishing the PCIA MWCH, PCIA took a new and untested concept and turned it into a world-class example of effective industry self-regulation. PCIA's operation of the MWCH has provided PCIA with a unique understanding of complex commercial spectrum relocation transactions and no other entity has PCIA's expertise in administering cost-sharing obligations. Since its inception in 1996, the PCIA MWCH has registered more than 3,500 relocated microwave links and more than \$750 million in total relocation costs, and has received PCN data from licensees regarding nearly 200,000 broadband PCS base stations. The PCIA MWCH has identified tens of thousands of cost-sharing obligations totaling over \$400 million. Despite the tremendous number of transactions involving hundreds of millions of dollars, only a small number of cost-sharing disputes have arisen, and fewer still have required Commission intervention.

PCIA's success in operating the PCIA MWCH has been recognized by countries around the globe. Representatives from Australia, Canada, France, Taiwan, and Japan have studied the PCIA MWCH operation so that they may establish similar processes in their countries.

If selected to serve as the clearinghouse for the AWS bands, PCIA will establish policies similar to those that have made the PCIA MWCH successful. PCIA will create open and transparent procedures that allow for the participation of interested parties in the clearinghouse. This openness will help to create an atmosphere in which AWS licensees have every incentive to conduct their affairs on a good faith basis, further promoting the speedy relocation of incumbents in these bands. PCIA will also educate AWS licensees on cost-sharing obligations and, as is done with the PCIA MWCH, will include information

relating to specific cost-sharing scenarios, credit and collections policies, and bypass procedures on the PCIA website.¹² PCIA will establish industry-driven dispute resolution processes based on the Commission's rules to minimize the need for extensive federal oversight. PCIA will also adopt a strong commitment to confidentiality, similar to that maintained by the PCIA MWCH, to ensure wide-spread participation in the clearinghouse.¹³

PCIA has the resources in place to immediately provide clearinghouse services in the AWS bands. First and foremost, PCIA can draw on the expertise of the relocation experts of the PCIA MWCH. These experts have worked on thousands of relocation agreements and understand the complexities behind relocations transactions. Second, PCIA has database/software capabilities in place to identify and track cost-sharing obligations. Third, PCIA has existing educational tools, including an established web site, to provide information on cost-sharing obligations. Finally, PCIA has already created cost-sharing procedures and policies, including an effective dispute resolution process, which easily could be tailored to the AWS bands.

In short, PCIA has both the expertise and resources to effectively provide clearinghouse services in support of the relocation of incumbent operations and the swift deployment of AWS services.

¹² The policies of the PCIA MWCH for cost-sharing obligations in the 1.9 GHz band are available on the PCIA web site at: http://www.pcia.com/pcia_micropolicy.htm.

¹³ The PCIA MWCH releases information only to those entities that require the information to meet cost-sharing obligations and as specified by the Commission.

IV. Conclusion

PCIA urges the Commission to rules to facilitate the rapid deployment of AWS by:
(1) establishing a cost-sharing clearinghouse in the AWS bands to ensure the equitable allocation of incumbent relocation costs among new AWS licensees and to minimize the burden on the Commission of resolving cost-sharing disputes; and (2) designating PCIA to serve as the AWS clearinghouse based on PCIA's extensive experience in providing clearinghouse services in the 1.9 GHz band.

Respectfully submitted,

PCIA, The Wireless Infrastructure Industry

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